Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
PRICE CAP PERFORMANCE REVIEW FOR AT&T	)	CC Docket No. 92-134
	)	

REPLY COMMENTS OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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SUMMARY

AT&T's initial comments demonstrated that price cap regulation has worked well as an intended "transitional step to even simpler regulatory frameworks" which rely on the competitive market to ensure low prices, innovative services, and minimal regulatory distortions. With full and effective competition throughout the interexchange market, such transitional regulation is unnecessary and counterproductive.

The other comments in response to the NOI do not seriously contest these conclusions. Indeed, MCI, one of AT&T's most strident challengers in both the marketplace and the regulatory arena, concludes that because of the "continuing development of interexchange competition," there is "no reason to continue price cap regulation of AT&T" beyond June, 1993.

Only Sprint seeks continuation of price cap regulation for AT&T's Basket 1 and 2 services, and argues that "AT&T will not be unfairly disadvantaged" because it already possesses "substantial regulatory flexibility" providing "more than enough leeway to compete vigorously in the interexchange market." Sprint's self-interested conclusions, however, are not supported by the facts. Contrary to Sprint's unsupported assertion, the international and Operator Assisted services of Basket 1 are vigorously competitive. Nor is there any reason to delay the scheduled elimination of price cap regulation of Basket 2. Upon the advent of 800 number portability in the first half of 1993, full streamlining of AT&T's Basket 2

services is in order, as the Commission has previously found. Similarly, ARINC's concerns about private line services are both misplaced and provide no basis for the extension of price cap treatment to any digital links of multipoint service, or for the proposed rate element banding requirements which were rejected in Docket 87-313.

The fact that price cap regulation should not be extended for another period is dispositive of the proposals raised by other commenters and which are without merit in any event. For example, the proposal of Southwestern Bell and U S West to treat cost reductions associated with Alternative Access Vendors as exogenous cost changes should be rejected, just as the exact same proposal was rejected in the original Docket 87-313 order, as well as on reconsideration. Southwestern Bell and U S West do not even purport to address most of the factors on which the Commission based its prior rulings, and fail to present any evidence of changed circumstances relevant to price capped services. So too, proposals by the CWA for the Commission to involve itself with employee work force levels under the guise of service quality concerns are entirely misplaced.

By this review proceeding, the Commission will have a full record to confirm the existence of robust competition throughout the interexchange market. Those facts require that the transitional step of price cap regulation be removed so that the full force of competition can be applied to provide its complete range of benefits to the American consumer. If,

notwithstanding the record, any final transition of price cap regulation is required by the Commission (i) all unnecessary regulatory provisions, including those identified in AT&T's comments (pp. 26-37), should be eliminated immediately; and (ii) there should be no adjustments to the productivity factor, and no "one-time" change in the price cap levels (AT&T, pp. 50-54).

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American Telephone and Telegraph Company ("AT&T") hereby submits its reply comments pursuant to the Notice of Inquiry released by the Federal Communications Commission on July 17, 1992.[1]

The NOI commenced the Commission's scheduled review of its price cap regulation of AT&T's interstate services. As the NOI suggests and as AT&T's comments clearly demonstrate, although price cap regulation has achieved its intended success as a transitional step, it is no longer necessary or desirable. To further increase the benefits of lower prices to consumers, facilitate the prompt introduction of innovative services, and reduce regulatory costs and distortions, the "transitional step" of price cap regulation (NOI, ¶ 10) should be promptly replaced by complete reliance on competitive forces. See AT&T, pp. 4-26.

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1 Notice of Inquiry, In the Matter of Price Cap Performance Review for AT&T, CC Docket No. 92-134, FCC 92-257 (released July 17, 1992) (hereinafter, "NOI").

In addition to AT&T, only seven parties submitted comments.[2] The other comments either confirm these conclusions or raise only limited issues that can be disposed of quickly. MCI "agrees that performance in the interexchange market has been generally good since the imposition of price caps," and attributes that success to "the continuing development of interexchange competition." MCI, p. 2. Most notably, MCI concludes that "there is no reason to continue price cap regulation of AT&T" beyond June, 1993 (id., pp. 7-8).[3]

The balance of these reply comments addresses the few issues that were raised by the other commenters concerning the alleged lack of competition in certain market segments and the composition of Basket 1 (i.e., Issues 1 and 5 of the NOI, discussed in Part I, below); proposed changes to the price cap

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2 The seven other parties submitting comments were Aeronautical Radio, Inc. ("ARINC"); the Communications Workers of America ("CWA"); Interexchange Resellers Association and Telecommunications Marketing Association ("IRA/TMA"); MCI Telecommunications Corporation ("MCI"); Southwestern Bell Telephone Company ("Southwestern Bell"); Sprint Communications Company LP ("Sprint"); and U S West Communications, Inc. ("U S West").

3 MCI's conclusion is conditioned on the assumption that "800 Number Portability" is implemented in March 1993, as scheduled, which should not delay the June 1993 elimination of price cap regulation of AT&T's services (see, e.g., AT&T, p. 5 n.2), and the resolution of Billed Party Preference issues, which provide no basis to continue price cap regulation (see infra at 8-11). Sprint, on the other hand, clings to the erroneous notion that AT&T still possesses market power as to some interstate services. See Part I, infra.

formulas to account for AT&T's alleged distorted incentives with respect to the use of Alternative Access Vendors (Issue 2, discussed in Part II); and proposals that the Commission interfere in AT&T's workforce decisions under the guise of ensuring service quality (Issue 4, discussed in Part III). With respect to Issue 3 of the NOI, no commenter suggested any change to AT&T's productivity factor or supported any one-time adjustment to the price caps.[4] The comments therefore do not dispute the conclusion that there is no basis for either of those possible changes. See AT&T, pp. 38-54.

I. THE INTEREXCHANGE MARKET IS FULLY AND EFFECTIVELY COMPETITIVE, AND PRICE CAP REGULATION OF AT&T THEREFORE SHOULD NOT BE EXTENDED

In its comments (pp. 4-26), AT&T demonstrated that the interexchange market, and all services offered therein, are subject to effective competition, and that price cap regulation should not be continued beyond June 1993. AT&T provided detailed data on the number and supply capacity of AT&T's competitors, the range and diversity of competing offerings, and the ability and willingness of customers to switch between carriers and between services to obtain the best value. The implications of these data are both plain and

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4 The only commenter other than AT&T to address the issue was MCI, which found that there was "no basis" to change the productivity factor, and that the adjustments raised by Issue 3 of the NOI could lead to inefficient pricing. MCI, p. 8.

inevitable: where competition is present and competitors possess substantial excess capacity, market forces inevitably assure the lowest possible prices and highest quality services to consumers. In these circumstances, continued price cap regulation will prevent AT&T from competing fully, shield its competitors from the rigors of the marketplace, and thus delay or deny to consumers the benefits that full competition would provide.

Few commenters dispute the competitiveness of the market, or support the retention of price cap regulation. In contrast to MCI's acknowledgment (p. 2) that "there is no reason to continue price cap regulation,"[5] Sprint alone supports continued price cap regulation of all AT&T services included in Baskets 1 and 2, claiming that AT&T retains market power over these services. Sprint, however, has failed to submit any of the "hard data" or "quantitative" information required by the NOI (¶ 34), and relies entirely on "[g]eneral claims" that the Commission has stated will be accorded

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5 MCI, pp. 7-8. MCI suggests (p. 9), however, that if "price caps are continued, it may make sense" to remove AT&T's optional calling plans from Basket 1, in order to protect customers in non-equal access areas or with "low usage." This suggestion is contradicted by MCI's own recognition that the entire market is competitive and that "there is no reason to continue price cap" regulation at all. In all events, AT&T charges the same rates to customers in equal access and non-equal access areas. Moreover, MCI does not dispute the existence of competitive alternatives for low volume customers, but simply asserts (p. 9), without support, that such customers are "unlikely to entertain" them. This is simply not the case. See AT&T, pp. 12-17.

"little weight" (id.), and that are in all events demonstrably false.

A. Basket 1 Services Are Fully Competitive

With respect to Basket 1, Sprint's principal claim (pp. 2-3) is that the Commission found in Docket 90-132 that "formidable competitive barriers" exist, which warrant continued price cap regulation. But the Commission made no such findings. To the contrary, the Commission stated that AT&T's MTS and OCP services "appear to be competitively provided," and simply elected to defer consideration of streamlined regulation of Basket 1 services until this proceeding.[6] The Commission's orders in Docket 90-132 thus provide no support for price cap regulation of AT&T beyond June 30, 1993.

The balance of Sprint's attempt to continue price cap regulation of AT&T's Basket 1 services consists of a series of unsupported, scattershot claims that cannot withstand scrutiny. For example, based on the alleged difficulty of obtaining operating agreements to provide service to other countries, and alleged differences in accounting rates paid by AT&T and other carriers, Sprint

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6 In the Matter of Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rulemaking, 5 FCC Rcd. 2627, 2646 (1990). See also In the Matter of Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 5880, 5908 ("IXC Rulemaking Order"), recon. 6 FCC Rcd. 7569 (1991), further recon., 7 FCC Rcd. 2677 (1992) ("IXC Reconsideration Order"); AT&T, pp. 7-8.

contends (pp. 5-7) that IMTS is "non-competitive," and that continued price cap regulation of IMTS is therefore necessary to prevent AT&T from cross-subsidizing rate decreases for domestic service with revenues from IMTS.

These claims are nonsense.[7] AT&T's international services, like its domestic services, face vigorous competition.[8] Sprint concedes that carriers other than AT&T now have in place operating agreements with all countries for which there is any appreciable demand.[9] In fact, AT&T's competitors now have operating agreements with 133 countries that together account for at least 98 percent of AT&T's international minutes. Each of the 25 countries that account for the greatest number of international minutes is directly

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7 Incredibly, as support for its position, Sprint attaches an excerpt from its petition for reconsideration in Docket 87-313 arguing precisely the opposite, i.e., that AT&T could use domestic service revenues to fund price decreases for the more competitive IMTS service. Neither of Sprint's inconsistent positions has merit.

8 See AT&T, pp. 19-23. Sprint has elsewhere proclaimed that it is "neck and neck with AT&T and MCI in the international market . . . ." Advertising Age, p. 37, July 22, 1991.

9 See Sprint, p. 6 ("Sprint does not contend that it is unable to obtain operating agreements"). Based on Section 214 applications filed with the Commission, AT&T has determined that Sprint has operating agreements with countries accounting for 92 percent of AT&T's international minutes. The comparable figure for MCI -- which boasts that it has "solid relationships with all of the world's telecommunications administrations" (MCI 1991 Annual Report, p. 20) -- is 97 percent.

served by at least three carriers using their own facilities.[10]

Contrary to Sprint's claim, moreover, the alleged differences in accounting rates paid by AT&T and other carriers are neither a source nor a reflection of market power.[11] Sprint does not dispute that in most instances, accounting rate reductions initiated by AT&T are made available by foreign correspondents to other carriers. Indeed, Sprint identifies only four countries as to which AT&T allegedly enjoys a lower rate.[12] These countries together

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10 See AT&T, pp. 19-20.

11 Sprint's suggestion (p. 6) that AT&T's success in securing agreements to reduce accounting rates in advance of its competitors is attributable to AT&T's "dominant position" or size is absurd. No carrier, including AT&T, has the "power" to dictate terms and conditions to monopoly correspondents. In fact, correspondents tend to be reluctant to agree to accounting rate reductions with the carrier with which they exchange the largest volume of traffic. AT&T's success in obtaining accounting rate reductions is attributable to its willingness to initiate and conduct extensive negotiations with foreign correspondents. In contrast, AT&T's competitors generally make no effort to initiate rate reductions, but prefer to "free-ride" on AT&T's efforts and thereby avoid negotiating expenses. See AT&T Opposition to Petitions for Reconsideration, CC Docket No. 90-337, Phase I, filed August 20, 1991.

12 Sprint, p. 7 n.8. Sprint's comparison of accounting rates for these countries is inaccurate in several respects. AT&T's current accounting rate for Saudi Arabia is $2.20 per minute, not $2.10. AT&T has negotiated and filed a rate of $1.50 with Peru, but the effectiveness of that rate has been deferred because of Sprint's protest.

account for approximately two percent of AT&T's international minutes, based on 1992 data.

Moreover, Sprint does not attempt to show that the differences in accounting rates are material when considered as part of carriers' overall costs of providing IMTS service, or that these differences are not offset by the costs AT&T incurs in initiating accounting rate reductions -- costs that its competitors avoid by free-riding on AT&T's efforts. See supra at 7 n.11. These differences in accounting rates exemplify the Commission's recognition that "each carrier brings advantages and disadvantages to the marketplace," that the "competitive process itself is largely about trying to develop one's own advantages," and that "all firms need not be equal in all respects for this process to work."[13]

Similarly, Sprint's claim that operator services are "not yet fully competitive," and that the Commission should not eliminate price cap regulation until the implementation of billed party preference, is wholly without merit.[14] Sprint submits no data whatever to support these conclusions, and can make no showing that continued price cap regulation would do anything other than insulate it from competition, to the detriment of consumers. Sprint merely claims that AT&T has

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13 IXC Rulemaking Order, 6 FCC Rcd. at 5890, 5892. See also id. at 5891-92 ("the issue is not whether AT&T has [cost] advantages, but . . . whether any such advantages are so great as to preclude the effective functioning of a competitive market").

14 Sprint, pp. 7-9; see also MCI, p. 7.

issued more calling cards than other carriers (p. 7), and that its introduction of proprietary cards has made it "difficult for customers of other IXCs to make a call from a payphone presubscribed to AT&T" (p. 8). These assertions are false and deeply ironic.

Customers themselves have confirmed that proprietary cards actually promote, rather than hinder, customer choice, and do not impair competition.[15] AT&T introduced its proprietary calling card in response to customer demand for a card that protects them from the exorbitant rates of some operator services providers to which they would otherwise be exposed.[16] Sprint introduced its own proprietary card long before AT&T introduced one. Sprint and MCI together have issued about 30 percent more proprietary cards than AT&T. These facts foreclose any suggestion that the introduction of a proprietary card by AT&T is anti-competitive, or provides

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15 See, e.g., Reply Comments of Colorado Office of Consumer Counsel, In the Matter of Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, filed June 17, 1992 ("COCC Reply Comments"), p. 3 ("Some commenters imply that proprietary cards restrict customer choice. We assert the opposite: customers have chosen").

16 See Comments of SDN Users Association, CC Docket No. 92-77, filed May 17, 1992, p. 2 (AT&T's proprietary card was developed "AT CUSTOMERS' REQUEST") (emphasis in original); COCC Reply Comments, p. 2 ("the existence of proprietary calling cards" enables customers to avoid "exorbitant rates" charged by some carriers); AT&T Comments, CC Docket No 92-77, filed July 7, 1992 ("AT&T Billed Party Preference Comments"), pp. 6-7; AT&T Reply Comments, CC Docket No. 92-77, filed June 17, 1992, p. 13.

AT&T with any advantage, much less an unfair advantage, over its competitors.

Likewise, Sprint's assertion that proprietary calling cards make it "difficult" for customers to use carriers other than the presubscribed carrier is baffling and wrong. The use of a calling card, proprietary or otherwise, has no effect whatsoever on the ability of a customer to use an operator service provider ("OSP") other than the one to which the phone is presubscribed.[17] As a result of TOSCIA and Commission rules, customers who wish to use such other OSPs may readily do so by dialing an access code (i.e., 10XXX, 800 or 950). The fact that 10XXX unblocking has not been fully implemented does not, as Sprint suggests (p. 8), prevent customers from using their preferred carrier. Customers who are unable to use a 10XXX access code may still reach their carrier of choice by using 800 or 950 access. Indeed, in comments submitted "on behalf" of Sprint, United Telecommunications has conceded that 800 and 950 access, which are now "fully effective," "will promote customer choice" where 10XXX access does not now exist.[18]

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17 To the extent Sprint is somehow implying that AT&T's issuance of proprietary calling cards prevents customers from using carriers other than AT&T, Sprint is likewise incorrect. Customers who wish to make calling card calls over another carrier's network may use a calling card issued by that carrier, one of the more than 50 million calling cards issued by LECs, or a commercial credit card.

18 See Comments of United Telecommunications, Inc., Policies and Rules Concerning Operator Service Access

(footnote continued on following page)

In short, there is no reason to retain price cap regulation of operator services until the implementation of billed party preference -- which will not occur, if at all, until at least 1996.[19] As AT&T demonstrated in its initial comments, intense competition for operator services exists today. And, as numerous parties confirmed in Docket No. 92-77, most of the claimed benefits of billed party preference are already available for the vast majority of operator services calls as a result of the access and unblocking requirements mandated by Congress and the Commission.[20] Indeed, current arrangements allow the billed party to designate the preferred OSP for almost 90 percent of interLATA operator service calls.[21] Thus, no legitimate purpose would be served by linking the elimination of price cap regulation to the implementation of billed party preference.

(footnote continued from previous page)

and Pay Telephone Compensation, CC Docket No. 91-35, filed April 12, 1991, pp. 2-3 (emphasis added).

19 See Comments of Ameritech, CC Docket 92-77, filed July 7, 1992, p. 2; Comments of Bell Atlantic, CC Docket No. 92-77, filed July 7, 1992, p. 2; Comments of U S WEST, CC Docket No. 92-77, filed July 7, 1992, pp. 10-11.

20 See AT&T Reply Comments, CC Docket No. 92-77, filed August 27, 1992, p. 2.

21 See AT&T Billed Party Preference Comments, p. 8 n.*

B. Removal of Basket 2 Services From Price Cap Regulation Should Proceed as Scheduled

There is also no reason to delay relief for AT&T's Basket 2 services. Contrary to Sprint's suggestion (pp. 9-10), no further evidentiary proceeding to consider the competitiveness of the market for 800 services is warranted. The Commission has found that the only possible impediment to competition for 800 services is the lack of number portability, and that once number portability is achieved, price cap regulation of AT&T's Basket 2 services will be replaced by streamlined regulatory treatment.[22] Sprint's comments offer nothing that would justify re-examination of this conclusion.

In Docket 90-132, AT&T demonstrated that Basket 2 services are subject to the same intense competitive pressures as the Commission found applicable to other business services. In its IXC Rulemaking Order, the Commission found that but for number portability, "no party has identified any significant

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22 See IXC Rulemaking Order, 6 FCC Rcd. at 5905 n.233; see also NOI, ¶ 10 ("800 number portability and streamlining of Basket 2 will occur in the first half of 1993"); IXC Reconsideration Order, 7 FCC Rcd. at 2680 n.40. The Commission's statement in the IXC Rulemaking Order that it "intend[s] to implement, on our own motion or on petition, further streamlined regulation for AT&T's 800 services when 800 number portability is generally available" in no way implies a need or intent to conduct further evidentiary proceedings, as Sprint contends. No such proceedings were conducted, for example, prior to the release of the order granting streamlined treatment to AT&T's Tariff 12 services after their lawfulness was reaffirmed in the Tariff 12 remand proceeding. See In the Matter of Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 7255 (1991).

barriers to 800 services competition,"[23] and that even the number portability factor is a concern to, at most, only a small proportion of customers.[24] Sprint's suggestion that price cap regulation should be extended beyond number portability is nothing more than a meritless (and untimely) request for reconsideration of the Commission's decision. Each of Sprint's stated concerns has either been previously addressed by the Commission or relate solely to the implementation of 800 number portability, not to the overall competitiveness of the market.

For example, Sprint's concern relating to the provision of 800 Directory Assistance service by AT&T was addressed by the Commission three years ago, and is, in all events, completely irrelevant to the question of the streamlining of regulation for Basket 2 services. As AT&T demonstrated when this issue was first raised, any 800 services provider that is so inclined is completely free to provide a directory assistance service for itself and other

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23 IXC Rulemaking Order, 6 FCC Rcd. 5905 n. 233.

24 Id. at 5905-06. In all events, because no carriers' 800 numbers are portable today, the lack of number portability cannot justify the application of regulatory rules to AT&T alone. See AT&T Petition for Declaratory Ruling, In the Matter of Equal Application of Rules Regarding Inbound Services and Capabilities to All Interexchange Carriers, filed November 25, 1991; Emergency Petition for Writ of Mandamus to the Federal Communications Commission, In Re American Telephone and Telegraph Company, No. 92-1512 (D.C. Cir.), filed October 2, 1992.

carriers.[25] Sprint does not suggest that it cannot offer such a service and, more importantly, Sprint cannot show that 800 Directory Assistance constitutes a significant barrier to 800 services competition.[26]

Similarly, Sprint's concerns regarding the implementation of number portability have no bearing on the competitiveness of 800 services, or whether AT&T's Basket 2 services should be streamlined. For example, Sprint repeats (p. 10) the hypothetical concern it has raised elsewhere that once the data base is implemented, the incumbent 800 service provider may refuse to permit customers to change carriers. Such speculation, which applies equally to all incumbent 800 service providers (including Sprint), certainly does not constitute a basis for continuing price cap regulation of AT&T's 800 services.[27] Indeed, this concern is covered by

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25 Reply Comments of AT&T, CC Docket No. 86-10, filed May 3, 1988, p. 23.

26 Likewise meritless is Sprint's insinuation (p. 13) that AT&T "likely applies different rates, terms and conditions to its own 800 service than apply to its competitors" for 800 Directory Assistance Service. As AT&T showed in 1989, the standard cost factors (including profit) used to develop the 800 Directory Assistance rates are the same as those used to develop rates for AT&T's 800 service. See AT&T's Reply, Transmittal No. 1721, filed August 31, 1989, p. 7. Further, AT&T explicitly represented to the Commission that it would provide 800 Directory Assistance service on a nondiscriminatory basis to all 800 service providers, including itself (see AT&T Transmittal No. 1933, filed November 29, 1989), and on this basis AT&T's tariff for this service was permitted to take effect.

27 See Comments of AT&T on Sprint's Petition for Declaratory Ruling, filed August 20, 1992, pp. 1-4 (for its part, AT&T stated that it would "of course comply with the

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industry guidelines which prohibit such conduct. These measures, as well as competitive market pressures, will ensure that this concern is adequately addressed for the benefit of all 800 service providers and customers alike.[28]

In sum, Sprint's comments raise no new or compelling arguments, and provide no basis for the Commission to reconsider its conclusion that the removal of Basket 2 services from price cap regulation "will occur" when number portability arrives. Indeed, even MCI (pp. 7-8) recognizes that once number portability is available, "there is no reason to continue price cap regulation" of AT&T's Basket 2 services.

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customer's wishes to move the customer's traffic to other carriers and/or to change RESP ORG" (id. at 2 n.2)).

28 Sprint also suggests (p. 11) that when number portability is fully implemented, customers may decide not to change carriers because they may be concerned about "the transition to a new carrier" under the data base system. Again, Sprint's concern is highly speculative. After number portability is available, customers may decide to change or not to change carriers for any number of reasons. It is up to each provider of 800 services to convince customers that its service should be chosen. The fact that customers can switch to a different vendor precludes the incumbent from charging supracompetitive prices. The same is true for hypothetical customers who "may be concerned" about the data base. Any attempt by the incumbent to charge supracompetitive rates would alienate these customers, who would be all too happy to leave, if not immediately, then when any concerns about the data base have been resolved.

C. ARINC's Proposals With Respect to Basket 3 Services Should be Rejected

Finally, ARINC repeats its request in Docket 90-132 that Basket 3, which is now comprised solely of analog private line services, be expanded to include certain services that use digital facilities, and that the Commission establish "service band requirements," for each rate element within ARINC's proposed reconstituted Basket 3. As AT&T has shown, there is no basis for these requests.[29]

In particular, ARINC contends that Basket 3 should include the analog multipoint charge not only when the customer uses AT&T's analog IOCs, but also when the customer uses AT&T's digital ASDS IOCs. In essence, ARINC requests the Commission to require AT&T to sever a rate element of its digital ASDS offering -- which is no longer subject to price cap regulation -- and to treat this rate element under price cap regulation as if it were part of an AT&T analog private line offering. Under ARINC's view, whether the service is subject to price cap regulation would depend not on the nature of the service provided by AT&T (and thus the competitive circumstances affecting it), but on the nature of the customer's terminal equipment. ARINC provides no support for

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29 See AT&T Opposition to Petitions for Reconsideration, CC Docket No. 90-132, filed January 3, 1992, pp. 18-19; AT&T Reply, AT&T Communications, Revisions to Tariff F.C.C. Nos. 9 and 11, Transmittal Nos. 4320 and 4322, filed August 14, 1992, pp. 4-7 (incorporated herein by reference); AT&T Communications, Revisions to Tariff F.C.C. No. 9, Transmittal Nos. 3464 and 3465, filed October 3, 1991.

this proposal, which is in all events foreclosed by the Commission's decision to limit price cap regulation to those services for which, unlike digital private line services, competitive alternatives are supposedly not available.

The dispositive fact is that other vendors can and do furnish the identical services provided by AT&T: digital private line services connected to the identical analog local channels furnished by the LEC (or other access suppliers).[30] AT&T's competitors actively market these services, and customers are willing and able to switch to them.[31] In the last twelve months alone, customers such as Exxon, Tyson Farms and Browning Ferris, Inc. have chosen to replace their AT&T multipoint service with comparable services provided by other interexchange carriers, and the Federal Aviation

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30 See, e.g., MCI Tariff F.C.C. No. 1, Section C.2.01; MCI Tariff F.C.C. No. 7, Section C.2.01223 (offering "point to point dedicated digital circuits" capable of being "accessed by either Analog Local or Digital Local Access"); Sprint Tariff F.C.C. No. 7, Section 3. See also AT&T Reply, Transmittal Nos. 4320, 4322, p. 6 n.15.

31 Thus, MCI has challenged GSA's award to AT&T of multi-point business, claiming that it is "capable of and interested in" providing this service, which it offers to both commercial and government customers. MCI Protest Complaint, MCI v. GSA (GSA Board of Contract Appeals), filed August 8, 1992, ¶ 4. See also id. at ¶ 9 (stating that "various carriers" currently provide multipoint service to government agencies).

Administration awarded to MCI a bid that requires the vendor to have the capability to provide such services.[32]

Because of the existence of these competitive alternatives, AT&T could not (and did not) propose to "double the rates" for its "private line services," as ARINC (p. 3) suggests. ARINC's calculation considers only one rate element. As the Commission has recognized, assessments of price increases at the rate element level are not meaningful.[33] Rather, what is important is the "price of the service." As AT&T has shown, the tariff revisions about which ARINC complains would increase the price of the service by between 3 to 5 percent.[34] Such an increase is not remotely indicative of market power.

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In sum, no commenter contradicts AT&T's showing that AT&T lacks market power in the interexchange market. The Commission should recognize the reality of the marketplace,

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32 See MCI Gets a $558 Million FAA Contract for Air Traffic Control Communications, Wall St. J., March 16, 1992, at B3.

33 See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd. 2873, 3059-60 (1989). Moreover, ARINC's extraordinary request that the Commission establish bands by rate element is foreclosed by the Commission's findings that banding by rate element is not necessary to protect consumers and can deny carriers the flexibility they need to "allocate costs and price efficiently." Id.

34 See AT&T Reply, Transmittal Nos. 4320 and 4322, filed August 14, 1992, p. 9 n.22.

remove AT&T's services from price cap regulation, and permit AT&T to compete on an equal footing with its rivals.

II. PROPOSALS TO RECONSIDER PRIOR COMMISSION RULINGS CONCERNING AAV ACCESS SERVICES ARE UNSOUND AND UNSUPPORTED BY EVIDENCE OF CHANGED CIRCUMSTANCES

Issue 2 of the NOI invited comments on possible changes to the price cap formulas, if price cap regulation were extended beyond June, 1993. See AT&T, pp. 26-27. Only two commenters, Southwestern Bell and U S West, address this issue. Both resurrect a proposal -- twice considered and rejected by the Commission -- that the AT&T price cap formula treat reductions in access fees paid to Alternative Access Vendors ("AAVs") as exogenous cost changes. They argue that "circumstances have changed significantly" in the access market since the Commission last rejected this proposal in 1991, pointing to the continued growth of AAVs.[35]

Even if the Commission were to extend price cap regulation in some fashion, there is no basis for the formula changes Southwestern Bell and U S West suggest. The Commission rejected proposals concerning AAV access charge treatment in the 1989 AT&T Price Cap Order and again in the 1991 Reconsideration Order for many reasons, only one of which was the small magnitude of AAV services. For example, the Commission found that because interexchange competition compels AT&T to use the most cost-efficient access services

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[35] Southwestern Bell, p. 2; U S West, p. 4.

and vendors, the "bias" alleged by Southwestern Bell and U S West simply does not exist.[36] The Commission also found no reason to treat AAV access reductions, which are directly attributable to AT&T's efforts in negotiating reduced rates, as "exogenous" cost changes.[37] Neither Southwestern Bell nor U S West address any of these other rationales for the Commission's decision.

Even with respect to the magnitude of AAV access services, moreover, Southwestern Bell and U S West cannot show changed circumstances, because AT&T's services which use or offer AAV access are not subject to price caps.[38] The Commission should therefore reject this proposal as an untimely request for further reconsideration.

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36 Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd. 665, 673 (1991), remanded on other grounds, No. 91-1178 (D.C. Cir. September 8, 1992).

37 Id. at 674 ("we do not believe we should recapture AT&T's cost savings whenever AT&T develops a way to keep its costs below the PCI").

38 AT&T obtains a small amount of dedicated, special access from AAVs for use with AT&T services that are not subject to price cap regulation. For example, AT&T's Tariff 11 services offering dedicated access services to customers have never been subject to price caps. Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd. 2873, 3037 (1989), recon., 6 FCC Rcd. 665 (1991), remanded on other grounds, No. 91-1178 (D.C. Cir. September 8, 1992). Other AT&T services for large businesses that may use special access from AAVs were removed from price cap regulation in Docket 90-132. In contrast to the claimed growth of AAVs for special access, any switched access purchased by AT&T from AAVs remains de minimis.